UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/NGO/11
9 February 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[26 January 1998]

Extrajudicial, summary or arbitrary executions

1. The International Human Rights Law Group welcomes the 1997 mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the United States of America and looks forward to the Special Rapporteur's forthcoming report (E/CN.4/1998/68/Add.3). As a human rights non-governmental organization based in the United States, the Law Group considers the mission of the Special Rapporteur to be critically important in reaffirming the basic principles that human rights are universal in their applicability, that impartiality must guide all United Nations human rights activities, and that no country should be exempt from international scrutiny under internationally accepted human rights standards.

2. The International Human Rights Law Group was pleased to support the visit of the Special Rapporteur on extrajudicial, summary or arbitrary executions. In particular, it was important to disseminate information concerning the mandate and work of the Special Rapporteur to the many representatives of non-governmental organizations who are working for human rights in the United States and who have had only a few opportunities, such as the 1994 visit of the Special Rapporteur on racism, racial discrimination and xenophobia, to raise their concerns directly with United Nations human rights experts. One concern that continues to be raised is that by failing to ratify or by making reservations to key international human rights treaties, such as the International Covenant on Civil and Political Rights, the United States has shielded its human rights violations from international scrutiny as well as from direct legal action.

3. The International Human Rights Law Group applauds the Special Rapporteur on extrajudicial, summary or arbitrary executions for examining the practice of capital punishment in the United States and the impact of racism and poverty on the use of the death penalty. Compounding the violations that are inherent in State-sanctioned killings, the application of the death penalty in the United States is further marked by socio-economic and racial inequities. The legacy of slavery in the United States continues to have an impact on the criminal justice system and racial bias often plays a role in determining who receives a death sentence. During the mission to the United States, the Special Rapporteur received a number of complaints concerning such injustices, including abusive practices of law enforcement officials and patterns of violations of the right to life, such as deaths resulting from police actions. The Special Rapporteur also examined the impact of the death penalty on non-nationals, in particular, the repeated failure of the United States to notify the country of which the accused is a national that capital charges are pending or that a death sentence is being imposed. Further, the Special Rapporteur underscored the critical point that the practice of imposing the death sentence on and executing juveniles and the mentally infirm is contrary to internationally accepted standards and represents a violation of human rights law.

4. The International Human Rights Law Group, in reaffirming the fundamental principle that the death penalty must be universally abolished, wishes to call attention to three central themes which emerge from an analysis of the administration of the death penalty in the United States and which were

highlighted by the 1997 mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions:

(a) In the United States, and in every country that provides for capital punishment, the death penalty is imposed disproportionately against members of minority groups and the poor;

(b) There is a continued need for United Nations human rights mechanisms to examine human rights violations that may result from legally sanctioned State practices and penalties;

(c) Securing the full cooperation of national Governments during missions of United Nations independent experts is critically important, as is facilitating access to appropriate government officials at all levels.

5. With respect to the first of the central themes, data reveal that in the United States, the racial, ethnic, and economic backgrounds of the defendant and the victim are often determining factors in deciding the harshness of criminal penalties. The imposition of the death penalty represents the ultimate human rights violation, particularly as it is more often imposed upon the least powerful and most disadvantaged members of society. While the particular nature of race- and poverty-based discrimination in the United States must be examined, the worldwide use of the death penalty against members of unpopular minority groups, non-nationals, and others of lesser power, including political dissidents, must also be condemned. Not only is capital punishment inherently wrong, it is widely imposed in a discriminatory, arbitrary, politically motivated or otherwise unjustified manner. The notorious case of Ken Sara-Wiwa and eight other Ogoni activists in Nigeria is an egregious example of politically motivated executions. Moreover, in some countries the death penalty is imposed for an unacceptably wide range of crimes. For instance, in China, where thousands of death sentences and mass summary executions are carried out each year, the death penalty is regularly imposed for non-violent offences. Similarly, in Malaysia, Singapore and Saudi Arabia, people are sentenced to death and executed for such non-violent crimes as drug-trafficking. Further, in some countries, capital punishment is imposed using particularly cruel, inhumane and painful methods. In Afghanistan, for example, men and women are executed in public, sometimes by being stoned to death. In all contexts and in every respect, the death penalty is an affront to human dignity.

6. Second, the discriminatory, arbitrary and unjustified application of the death penalty in many countries is a critical example of why United Nations mechanisms must be empowered to examine human rights violations when a punishment is provided for in law. In the United States, procedures for imposing the death sentence are formally required to follow an elaborate structure of justice, including representation by an attorney at the earlier stages of a capital trial and extensive judicial review. Notwithstanding these and other formal requirements, unjust results in capital cases are still possible and not uncommon. The Special Rapporteurs and Working Groups of the Commission on Human Rights must be able to apply universal human rights standards to reveal human rights abuses concealed by supposedly objective and

adequate procedural safeguards. The expert contributions of United Nations mechanisms would enhance the real and effective human rights protection of those who are subjected to punishments which contravene international norms and standards.

7. Third, as demonstrated by the difficulties experienced by the Special Rapporteur on extrajudicial, summary or arbitrary executions during the mission to the United States, it is essential that all of the independent mechanisms of the Commission on Human Rights are given full access to the representatives of national Government at the highest levels. The Law Group continues to be concerned by the inadequate efforts made by the United States Government to facilitate the visits of United Nations human rights experts. To prove its expressed commitment to the protection of human rights, the United States must lead by example, using all available and appropriate resources to provide visiting special rapporteurs with logistical support and access to information. It is also critically important that the Commission on Human Rights firmly insists upon continued high levels of cooperation for independent experts to carry out their mandates and fact-finding missions fully and effectively in all countries.

8. The International Human Rights Law Group urges the United States and all Governments which still provide for capital punishment to end this inhumane practice. We echo the continued call of the United Nations, and most recently of the Commission on Human Rights itself in resolution 1997/12, in encouraging the nations of the world to restrict the number of offences for which the death penalty is available and to consider suspending all executions. The International Human Rights Law Group joins the United Nations, the Commission on Human Rights and many other governmental and non-governmental organizations in calling for an end to the practice of all forms of legalized State killing.